

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-200923

DATE: May 6, 1983

MATTER OF: Federal Judges II - Entitlement to
December 1982 Comparability Pay Increase

DIGEST:

Question presented is entitlement of Federal judges to 4 percent comparability increase under section 129 of Public Law 97-377, December 21, 1982. Section 140 of Public Law 97-92 bars pay increases for Federal judges except as specifically authorized by Congress. We conclude that the language of section 129(b) of Public Law 97-377, combined with specific intent evidenced in the legislative history, constitutes the specific congressional authorization for a pay increase for Federal judges.

The issue in this decision is whether section 129 of Public Law 97-377, December 21, 1982, 96 Stat. 1830, 1914, provides "specific congressional authorization" for a pay increase for Federal judges as required by section 140 of Public Law 97-92, December 15, 1981, 95 Stat. 1183. We hold that the language of section 129(b) along with the legislative history of the provision constitutes the requisite specific congressional authorization for a 4 percent comparability pay increase for Federal judges.

BACKGROUND

This decision is in response to a request from the Honorable John P. East, United States Senate, concerning a recent pay increase for Federal judges. Senator East notes that in January 1983, Federal judges received a 4 percent pay increase based on the language and legislative history of section 129 of Public Law 97-377. Senator East argues that the language of section 129 does not specifically authorize a pay increase for Federal judges and that, since section 129 is not ambiguous, no reference to the legislative history is permitted. He contends further that the language of section 129 presupposes a pay increase of 27.2 percent which is then limited to 15 percent, but since Federal judges do not receive automatic pay increases, this language does not authorize a pay increase for Federal judges. Finally, Senator East argues that, even if the

language of the Conference Report on Public Law 97-377 interpreting section 129 as providing a pay increase for Federal judges is taken into account, it is not sufficient justification for such a pay increase in view of the entire legislative history of the continuing resolution and the definite and precise requirements of section 140 of Public Law 97-92 that Federal judges may not receive pay increases absent specific congressional authorization.

In response to our request for comments, Mr. William M. Nichols, the General Counsel of the Administrative Office of the United States Courts, argues that section 129 of Public Law 97-377 does provide for a 4 percent salary increase for Federal judges. Mr. Nichols contends that the reference in section 129 to "senior * * * judicial * * * positions" must refer to Federal judges or it would have no meaning or apparent purpose since the salaries of other senior officials of the judiciary are fixed by statute with reference either to judicial salaries or to levels of the Executive Schedule or General Schedule. He argues further that it is reasonable to look to the Conference Report on Public Law 97-377 to understand the compromise reached on the issue of lifting the pay cap for senior executive, legislative, and judicial positions. Finally, he argues that section 129 authorizes pay increases up to 15 percent, and since the only comparability pay increase Federal judges had not received was 4 percent in October 1982, the effect of section 129 was to grant Federal judges a 4 percent increase. He notes that other Federal officials received up to 15 percent because they had been denied several recent comparability increases.

OPINION

As noted in the letter from Mr. Nichols, the salaries of Federal judges are subject to adjustments by two mechanisms: (1) the Federal Salary Act of 1967, Public Law 90-206, Title II, 81 Stat. 624, providing for a quadrennial review of executive, legislative, and judicial salaries (2 U.S.C. §§ 351-361); and (2) the Executive Salary Cost-of-Living Adjustment Act, Public Law 94-82, Title II, 89 Stat. 419, 422 (1975), providing that salaries covered by the Federal Salary Act of 1967 will receive the same comparability adjustment on October 1 of each year as is made to the General Schedule under 5 U.S.C. § 5305 (5 U.S.C. § 5318 and 28 U.S.C. § 461).

Prior to 1982, under United States v. Will, 449 U.S. 200, 224-225 (1980), Federal judges received these annual comparability adjustments despite the enactment of "caps" on executive, legislative, and judicial salaries. The Supreme Court held that, since the pay caps were enacted after October 1, these caps diminished the compensation of Federal judges which had increased automatically on October 1 by the amount of comparability adjustment granted to the General Schedule. Such diminution of compensation was held to violate Article III of the Constitution. Therefore, Federal judges, in contrast to other high-level officials, received salary increases in 1976, 1979, 1980, and 1981. See Federal Judges I, B-200923, November 23, 1982, 62 Comp. Gen. _____.

Subsequent to the October 1981 pay increase, the Congress enacted Public Law 97-92, December 15, 1981, 95 Stat. 1183, a continuing appropriations act which provides in section 140 that Federal judges are not entitled to any salary increase "except as may be specifically authorized by Act of Congress." We held in our decision in Federal Judges I, cited above, that section 140 was permanent legislation and that, in the absence of a specific authorization by Congress, Federal judges were not entitled to any pay increase in October 1982. See also B-200923, October 1, 1982.

The question now presented to us is whether the language of section 129 of Public Law 97-377 constitutes a specific congressional authorization as required by section 140 of Public Law 97-92.

Section 129 of Public Law 97-377 provides in subsection (b) as follows:

"(b) In lieu of payment of salary increases up to 27.2 percent as authorized by law for senior executive, judicial, and legislative positions (including Members of Congress), it is the purpose of this section to limit such increases to 15 percent. Notwithstanding the provisions of section 306 of S. 2939 made applicable by subsection (a) of this section, nothing in subsection (a) shall (or be construed to) require that the rate of salary or pay payable to any individual for or on account of services performed after

December 17, 1982, be limited to an amount less than the rate (or maximum rate, if higher) of salary or pay payable as of such date for the position involved increased by 15 percent and rounded in accordance with section 5318 of title 5, United States Code." (Emphasis added.)

The crucial language in section 129(b) is that which refers to salary increases for "senior executive, judicial, and legislative positions." Although Senator East argues that this language is unambiguous and does not require reference to the legislative history, the Supreme Court has recognized that there is no rule of law forbidding the use of an aid to construction of the meaning of words, as used in a statute, however clear the words may appear upon examination. Train v. Colorado Public Interest Research Group, 426 U.S. 1, 9-10 (1976), quoting United States v. American Trucking Assns., 310 U.S. 534, 543-544 (1940). In Train, the Court found that the legislative history shed considerable light on the question involved. Similarly, we believe that the legislative history here sheds considerable light on the meaning of the term "senior * * * judicial * * * positions" as used in the continuing resolution.

The pertinent legislative history of section 129 is contained in the Conference Report on H.J. Res. 631, H.R. Rept. No. 97-80, 97th Cong., 2d. Sess., December 20, 1982, which states on page 193 as follows:

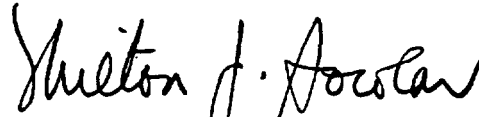
"The conferees have dropped the House provision regarding federal judges. Therefore, section 140 of P.L. 97-92 would not prevent the October 1982 cost-of-living adjustment from being paid to federal judges or Justices of the Supreme Court since the conference agreement provides a specific authorization by Act of Congress for salary increases for senior-level personnel, which includes those judges and Justices."

The legislative intent of the conferees in section 129 is clearly stated with a specific reference to section 140 of Public Law 97-92 which would otherwise preclude any pay increase for Federal judges. The conferees expressly rejected a House-approved provision which would have denied

any increase to Federal judges. The House provision, introduced by Representative Fazio, provided no adjustment for Federal judges and was agreed to by the House of Representatives. See 128 Cong. Rec. H9717-9722 (daily ed. December 14, 1982). We believe the rejection of the House-approved provision is clear evidence of congressional intent to provide Federal judges with a salary increase under this continuing resolution.

Although the Congress could have chosen more precise words to accomplish this result, we conclude that section 129 of Public Law 97-377 specifically authorizes a pay increase for Federal judges and meets the conditions of section 140 of Public Law 97-92.

Accordingly, we hold that the pay of Federal judges was properly increased under the authority of section 129 of Public Law 97-377.



Acting Comptroller General
of the United States